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ADOPTED

DECEMBER 22, 1993

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY BOARD AND
PAUL L. BARRETT, DIRECTOR

FROM: BRIAN DE LOREY, ASSISTANT DIRECTOR FOR
ECONOMIC DEVELOPMENT

SUBJECT: OLMSTED PLAZA CHAPTER 121A PROJECT
FIRST AMENDMENT TO REPORT AND DECISION

**EXECUTIVE
SUMMARY:**

Request adoption of the First Amendment to the Report and Decision on the Olmsted Plaza Chapter 121A Project to provide an additional year to commence the Project.

On October 31, 1991, the Boston Redevelopment Authority (the "Authority") adopted the original Report and Decision on the Olmsted Plaza Chapter 121A Project ("Project") which proposed to rehabilitate the historic Sears Roebuck Building (the "Sears Building") and create a new biotechnological and medical research and development facility with related commercial and office uses in the Fenway neighborhood. The project proposed to be developed in phases with a condominium form of ownership for each phase and subphase.

The Olmsted Plaza Chapter 121A Project was consistent with the Development Plan and Development Impact Project Plan for planned Development Area Number 36, approved by the Authority on November 30, 1989, the Boston Zoning Commission on December 13, 1989 and the Mayor on December 14, 1989, as amended by an amendment approved by the Authority on August 21, 1991.

To date, the Project has not commenced due to difficulties in securing commercially viable tenancies and consequently construction and permanent financing commitments. The Sears building, a Boston Landmark, continues to deteriorate with severe water infiltration problems. The blighted conditions determined in the original Report and Decision have become more acute.

To encourage redevelopment of the Project it is therefore requested that those rights and responsibilities contained in the original Report and Decision be extended for a period of one year. Similarly those public benefits envisioned by the project will be retained. The extension shall not limit, restrict or modify the Authority's right to approve a separate project for the Project Area under Chapter 121A. It is therefore recommended that, pursuant to Chapter 121A of the General Laws, and Chapter 652 of the Acts of 1960 both as amended, the Authority adopt the First Amendment approving a minor modification allowing for an extension of one year to commence the Project.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled "FIRST AMENDMENT TO REPORT AND DECISION ON THE OLMSTED PLAZA PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.), CHAPTER 121A, AND ACTS OF 1960, CHAPTER 652, BOTH AS AMENDED" be and hereby is approved and adopted in all respects.

JTB

UPPERM

4-0 PASS

BOSTON REDEVELOPMENT AUTHORITY

FIRST AMENDMENT TO REPORT AND DECISION ON THE OLMSTED
PLAZA PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.),
CHAPTER 121A, AND THE ACTS OF 1960, CHAPTER 652, BOTH AS
AMENDED

A. Prior Proceedings and Actions. Reference is made to the following:

1. An application dated October 18, 1991 (the "Original Application"), was filed with the Boston Redevelopment Authority (the "Authority") by Olmsted Plaza Associates ("OPA") for authorization and approval of a project, as more particularly described in such application (the "Project"), under Chapter 121A of the Massachusetts General Laws, as amended ("Chapter 121A"), and Chapter 652 of the Acts of 1960, as amended ("Chapter 652"), to be undertaken by OPA and Subparcel 1A Limited Partnership (the "1A Partnership"; collectively with OPA the "Project Developers").

2. On October 31, 1991, the Authority voted to adopt a Report and Decision on the Project (the "Report and Decision"). Such vote was approved by the Mayor of the City of Boston on November 4, 1991 and the vote as so approved was filed with the City Clerk of the City of Boston on November 5, 1991. The Report and Decision approved the Application to the extent set forth therein.

3. On December 3, 1991, the Project Developers entered into with the City of Boston (the "City") two separate contracts under Chapter 121A, Section 6A. A contract was entered into by and between the 1A Partnership and the City in connection with the undertaking of Phase 1A of the Project. A contract was entered into by and between OPA and the City in connection with the undertaking of Phases 1B and 2 of the Project.

B. Application for First Amendment. On November 24, 1993, on behalf of OPA a letter (the "Application for First Amendment") was filed with the Authority's Director requesting an amendment to the Report and Decision as follows:

"...to amend the Report and Decision such that it will expire not 24 months but 36 months after its certification [certification or approval being the date the Report and Decision was filed with the City Clerk, November 5, 1991]."

The Application for First Amendment is incorporated by reference as if fully set forth herein.

C. Authority's General Rules and Regulations. Reference is made to the "Boston Redevelopment Authority's Rules and Regulations Governing Chapter 121A

Projects In the City of Boston", originally adopted on June 22, 1978 and as amended through January 16, 1985 (the "General Rules and Regulations"). Rule 2(B)(5) of such General Rules and Regulations provides as follows with emphasis added:

"Development Schedule.

The Applicant shall set forth a proposed timetable for commencement and completion of the project should the Authority approve subject 121A project. The project must commence within a reasonable time after project approval. If it does not commence within one (1) year and an extension has not been requested and approved, the Authority reserves the right to rescind the project approval."

D. Approved Development Schedule. In the Report and Decision, Section L, entitled "Decision", the Authority approved the "...undertakings by the Project Developers of the Project...in the manner described in the [Original] Application and subject to and with the benefits of the provisions set forth in the [Original] Application..."

The Original Application in Section 5 set forth a "Development Schedule" as follows:

"Commencement of Phase 1A will occur with the acquisition of the Project Area by OPA and the 1A Partnership, which Applicant expects to occur by the end of 1991. Commencement of Phase 1B will depend upon marketing and financing considerations..."

The Project was to commence according to the approved Original Application by the end of 1991 with the acquisition of the Project Area. Notwithstanding the foregoing, under Rule 2(B)(5) of the Authority's General Rules and Regulations, the Project Developers were required to "commence" the Project within one (1) year of the approval date, being November 5, 1991. The one (1) year period expired on November 5, 1992.

E. Authority Action. The Authority is acting hereunder pursuant to Chapter 121A, Chapter 652 and the Authority's General Rules and Regulations, as amended and applicable. Further, the Authority, in acting hereunder has considered this Application for the First Amendment, the Original Application and Rule 2(B)(5) of the General Rules and Regulations, sufficient in the Authority's judgment to enable it to act as hereinafter set forth.

F. Decision. The Authority pursuant to Rule 2(B)(b) of its General Rules and Regulations hereby grants an extension to November 5, 1994 with regard to commencement of the Project, subject to the following conditions: (1) in the event that the Project Developers do not acquire the Project Area by May 5, 1994, the Authority may by vote in accordance with Chapter 652 rescind the Project and all of the rights

of the Project Developers as set forth in the Application in all respects; and (2) the granting of the extension shall not limit, restrict or modify the Authority's rights under Chapters 121A and 652 to approve a separate Project for the Project Area at any time after the adoption of this document (the "First Amendment to Report and Decision").

G. Project Based Rules and Regulations. Notwithstanding the minimum standards for financing, construction, maintenance and improvement of the Project or any other rules and regulations set forth or referenced in the Report and Decision, Section I, to the contrary, the Authority hereby adopts the conditions set forth in Section F of the First Amendment to Report and Decision as additional project based rules and regulations.

H. Report and Decision. All provisions of the Report and Decision not specifically amended or revised by, or in conflict with, this First Amendment to Report and Decision, shall remain in full force and effect.

I. Estoppel Certificates. The Authority's Director is hereby authorized to provide lenders, governmental bodies or other interested persons or entities Estoppel Certificates or like instruments, which confirm matters set forth in this First Amendment to Report and Decision.

J. Severability. In the event any provision of this First Amendment to Report and Decision shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

